

### **REMARKS**

By the above amendments, claims 5-14, the specification and the drawings are revised to place this application in immediate condition for allowance. Currently, claims 5-14 are before the Examiner for consideration on their merits.

In response to the rejection under 35 U.S.C. § 112, second paragraph, the dependencies of claims 6-14 have been corrected. Also, claims 8 and 14 are revised responsive to the Examiner's identification of unclear language. By these changes, all claims are within the purview of 35 U.S.C. § 112, second paragraph, and the rejection should be withdrawn.

In response to the objection to claim 10, the specification has been revised and Figure 4 is amended to depict the plastic tie. These changes overcome the objection to the drawings.

Turning now to the prior art rejection, the Examiner relies principally on two prior art references to reject the claims, United States Patent Nos. 4,225,174 to Hennessy et al. (Hennessy) and 4,097,082 to Orofino. The rejections are traversed on the grounds that the Examiner has not established either a *prima facie* case of anticipation or obviousness against claim 5. The traversal is set forth below under the headings of the respective prior art references.

#### **HENNESSY**

The Examiner contends that Hennessy anticipates claim 5. This position is faulty since Hennessy and the claimed collector are fundamentally different devices, and Hennessy cannot be said to include each and every feature of the collector of claim 5. Hennessy is designed as a jaw action collector. That is, the Hennessy device 10 comprises a pair of articulated pick-up jaws, one being fixed as 22 and the other one as 24 pivotally mounted to the fixed jaw. The fixed jaw 22 is carried at the lower end of a tubular cane-like handle 14. The upper end of the handle 14

has a pistol grip assembly 16 including a spring-biased trigger 18 and a movable pull rod 20.

The rod 20 extends inside of the handle 14 and is mounted on a crank arm 74 of the jaw 24.

A bag B is placed over the jaws, with the inside of the bag intended to contact the excrement being collected. Once the excrement is identified for pick-up, the trigger is depressed to close the jaw 22 and capture the excrement with the jaws, the excrement being held against an exterior surface of the bag B. The bag B can then be pulled back over the jaws, so that the exterior of the bag becomes the interior with the collected excrement.

It is contended that Hennessy does not teach the collector of claim 5 for the simple reason that Hennessy does not teach the claimed frame and second rod connected to the first rod and movable along the frame.

Ignoring for the moment the arguments that the crank arm 74 is not a rod and the fixed jaw 22 is not a frame, Hennessy does not teach the combination of components and their respective interaction. Claim 5 has been revised to clarify that the second rod is mounted for sliding movement along the frame, and no such mounting is found in Hennessy. While the Examiner could contend that crank arm 74 moves with respect to the jaw 22, it is a pivoting movement. The crank arm is neither mounted to the fixed jaw 22, i.e., the alleged frame, nor does it slide along the fixed jaw 22. The crank arm is mounted to the movable jaw 24 and at best, it pivots with the movable jaw 24 when actuated by the trigger 18. Lacking the claim limitations regarding the second rod and its action with the frame, Hennessy cannot anticipate claim 5.

It is further contended that Hennessy does not meet the limitation regarding the sack being fixed to the frame and to the second rod such that it is open or closed according to the position of the second rod. The sack of Hennessy merely encompasses the two jaws 22 and 24,

and it is not attached to the crank arm 74 whatsoever, notwithstanding the allegation in the rejection that the sack B is indirectly attached to the frame. Moreover, the sack of claim 5 is now defined with its opening being open or closed as a result of the movement of the second rod. The opening of the sack of Hennessy is not controlled by the jaw action since Hennessy's collection device operates in a completely different manner. The opening of the sack in Hennessy receives the jaws prior to excrement collection. The opening is then used to remove the sack, the removal reversing the sack so that the collected excrement is on the inside of the sack. The failure of Hennessy to include the claimed sack and its arrangement with the frame is another reason why the rejection based on 35 U.S.C. § 102(b) fails.

Since the Examiner has failed to establish that Hennessy teaches each and every limitation of claim 5, the rejection cannot be maintained and must be withdrawn.

Moreover, given the fundamental difference between the two inventions, there is no reason why one of skill in the art would modify the collector of Hennessy so as to arrive at the collector of claim 5. As pointed out above, Hennessy is a jaw action collector that operates to collect excrement on the ground. The invention, by having the sack opening controlled by movement of the first and second rods, is designed to collect excrement before it touches the ground. Given this difference, there is absolutely no motivation to modify Hennessy without resort to the Applicant's invention as a teaching template.

Failing to establish a *prima facie* case of anticipation against claim 5 and lacking the motivation to make a rejection under 35 U.S.C. § 103(a), claim 5 is patentably distinguishable over Hennessy.

The secondary references to Searing and Cooper do not supply the deficiencies noted above in Hennessy. Thus, even if these references were used to modify Hennessy, the invention of claim 5 is still not taught.

### OROFINO

Only claim 5 stand rejected based on Orofino. As with Hennessy, Orofino teaches a collector that operates in a fundamentally different manner than that claimed. Orofino employs an integral frame member 12 supporting pickup means 14 and having a bracket 16. A tubular sleeve 20 is endwise mounted at a lower end thereof on the bracket 16 and an operating rod 22 having a knob 23 on an upper end thereof is slidably received in the tubular sleeve 20. A hand-gripped control means 24 is mounted at the upper end of the tubular sleeve 20.

The pickup means 14 includes a pair of pivotally planar blades 56 and 60. A hinge 86 is mounted at the top side edges 88 and 90 of the blades 56 and 60, the hinge 86 being connected to the operating rod 22 at the lower end thereof.

The hand-gripped control means 24 is provided with a handgrip 190 mounted at the upper end of the sleeve 20, the operating rod 22 sliding within the sleeve 20.

A flexible wrapper 250 is releasably positioned within the pickup means 14 for use in holding, transporting, and disposing of animal excrements.

In use, the operator of the collector of Orofino actuates the device by pulling the rod 22 upwardly, the blades 56 and 60 thus being opened. When the rod 22 is pushed downward, the blades 56 and 60 pivot into the closed position as illustrated in Figure 4.

In the rejection, components 12, 14, and 16 are alleged to be the frame, component 22 is alleged to be the first rod, and component 140 is alleged to be the second rod. The rejection fails

for the reason that the component 140 cannot be considered to be the second rod as now defined in claim 5. The second rod slidingly moves along the frame. The component 140 is merely a 90° extension of the rod 22, and functions as the pivoting axis of the hinge arms 92 and 94. There is no sliding movement of the second rod along a frame. In fact, component 140 is stationary except for its longitudinal movement when rod 22 moves, and it clearly does not slide along any part of the alleged frame as frame 12, plates 14, and bracket 16.

It is also contended that the combination of components 12, 14, and 16 do not form a rectangular frame. Orofino himself describes 12 as a frame, with the frame 12 supporting the pickup means 14. It is unreasonable to interpret the pickup means 14 of Orofino as part of the frame. Taking member 12 as the frame member, the hinge rod 140 does not slide along the frame, and this limitation is not taught.

Besides failing to teach the claimed second rod, the sack of Orofino is not fixed to the frame 12 and hinge rod 140. Instead, it is linked to the pickup means in the Figure 3 embodiment, or the hinge plates 92 and 94 in the embodiment of Figures 7 and 8. Thus, the limitations regarding the sack of claim 5 are also not found in Orofino.

Since Orofino does not teach all of the limitations of claim 5, it cannot anticipate this claim, and the rejection based on 35 U.S.C. § 102(b) must be withdrawn.

Similar to the argument made above regarding Hennessy and obviousness, since Orofino and the invention employ fundamentally different mechanisms for excrement removal, there is no basis to conclude obviousness based on the teachings of Orofino. Any further allegation of this nature could only be hindsight, and could not be sustained on appeal.

## SUMMARY

In light of the amendments and arguments made above, it is contended that the Examiner has failed to establish a *prima facie* case of anticipation or obvious based on either Hennessy or Orofino against claim 5. Thus, this claim and its respective dependent claims are in condition for allowance.

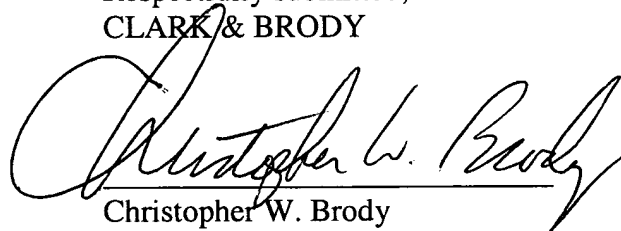
Accordingly, the Examiner is respectfully requested to examine this application and pass claims 5-14 onto issuance.

If the Examiner believes that an interview with Applicant's attorney would be helpful in expediting the allowance of this application, the Examiner is requested to telephone the undersigned at 202-835-1753.

Again, reconsideration and allowance of this application is respectfully requested.

Applicants respectfully submit that there is no fee required for this submission, however, please charge any fee deficiency or credit any overpayment to Deposit Account No. 50-1088.

Respectfully submitted,  
CLARK & BRODY



Christopher W. Brody  
Registration No. 33,613

**Customer No. 22902**  
1090 Vermont Avenue, NW, Suite 250  
Washington, DC 20005  
Telephone: 202-835-1111  
Facsimile: 202-835-1755

Docket No.: 11016-0038  
Date: August 15, 2006